

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Michael Kubayanda, Vice Chairman;  
Mark Acton;  
Ann C. Fisher; and  
Ashley E. Poling

Competitive Product Prices  
Inbound Competitive Multi-Service Agreements with  
Foreign Postal Operators  
PRIME United States Postal Service  
Tracked Service Agreement (MC2010-34)  
Negotiated Service Agreements

Docket No. CP2020-169

ORDER APPROVING ADDITIONAL  
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT  
WITH FOREIGN POSTAL OPERATORS

(Issued June 25, 2020)

I. INTRODUCTION

On June 11, 2020, the Postal Service filed a notice with the Commission pursuant to 39 C.F.R. § 3035.105 and Order No. 546,<sup>1</sup> stating that it has entered into an

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<sup>1</sup> Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Service Agreement with Foreign Postal Operators, June 11, 2020 (Notice). See *also* Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). The Notice concerns the inbound competitive portions of the PRIME United States Postal Service Tracked Service Agreement, referred to as the “PRIME Agreement.” Notice at 1. The Postal Service seeks to include the PRIME Agreement within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

For the reasons discussed below, the Commission approves the addition of the PRIME Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

## II. BACKGROUND

On June 11, 2020, in accordance with 39 C.F.R. § 3035.105 and Order No. 546, the Postal Service filed its Notice, along with supporting documents. See *id.* at 4-5. The Postal Service presents rates only related to the inbound competitive portions of the PRIME Agreement.<sup>2</sup> In the Notice, the Postal Service asserts that the PRIME Agreement is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 3. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the PRIME Agreement, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. *Id.* at 4-5. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that redacted portions of the PRIME Agreement, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 1.

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<sup>2</sup> *Id.* at 5-6. The PRIME Agreement does not include rates for untracked mail, PRIME Registered mail, or other mail items requiring a signature.

The Postal Service notes that additional FPOs are expected to accede to the PRIME Agreement in the near term and beyond July 1, 2020, and it includes financial information about FPOs that may accede to the PRIME Agreement in the future. Notice at 5; *id.* Attachment 2 at 4. The Postal Service has provided several notices in this docket with additional signatories to the PRIME Agreement.<sup>3</sup>

The PRIME Agreement is intended to take effect on July 1, 2020, with an indefinite duration. Notice at 1, 5; *id.* Attachment 2 at 3, 4.

On June 12, 2020, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>4</sup> On June 17, 2020, Chairman's Information Request No. 1 was issued, with questions filed under seal.<sup>5</sup> On June 22, 2020, the Postal Service filed its response under seal, and on June 23, 2020, it filed a second response to CHIR No. 1 under seal, which included the filing of updated workpapers.<sup>6</sup>

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<sup>3</sup> Notice of United States Postal Service of Filing Additional Accessions to Inbound Competitive Multi-Service PRIME Agreement, June 15, 2020, at 1; Notice of United States Postal Service of Filing Additional Accessions to Inbound Competitive Multi-Service PRIME Agreement, June 17, 2020, at 1; Notice of United States Postal Service of Filing Additional Accessions to Inbound Competitive Multi-Service PRIME Agreement, June 23, 2020, at 1; Notice of United States Postal Service of Filing Additional Accessions to Inbound Competitive Multi-Service PRIME Agreement, June 24, 2020, at 1.

<sup>4</sup> Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, PRIME United States Postal Service Tracked Service Agreement, June 12, 2020 (Order No. 5544).

<sup>5</sup> Chairman's Information No. 1 and Notice of Filing Under Seal, June 17, 2020 (CHIR No. 1).

<sup>6</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, June 22, 2020; Response of the United States Postal Service to Chairman's Information Request No. 1, June 23, 2020 (Second Response to CHIR No. 1). Concurrently with its second response, the Postal Service filed a motion for late acceptance. See Motion of the United States Postal Service for Late Acceptance of Response to Chairman's Information Request No. 1, June 23, 2020. This motion is granted.

### III. COMMENTS

The Public Representative filed comments on June 23, 2020.<sup>7</sup> No other comments were received. Based upon a review of the PRIME Agreement and financial workpapers, the Public Representative concludes that the PRIME Agreement is functionally equivalent to the baseline agreement, and should meet the requirements of 39 U.S.C. § 3633(a). PR Comments at 2. She states the PRIME Agreement and the baseline agreement are similar enough to belong to the same product grouping. *Id.* She also affirms the financial workpapers demonstrate the prices in the PRIME Agreement should generate sufficient revenues to cover costs and meet the requirements of 39 U.S.C. § 3633(a). *Id.*

For these reasons, the Public Representative recommends the Commission approve the addition of the PRIME Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

### IV. COMMISSION ANALYSIS

The Commission's responsibilities in this proceeding are to ensure that the PRIME Agreement is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3035.105 and 3035.107).

*Functional equivalence.* In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the

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<sup>7</sup> Public Representative Comments, June 23, 2020 (PR Comments). Concurrently with her comments, the Public Representative filed a motion for late acceptance. See Motion of Public Representative for Late Acceptance of Public Representative Comments, June 23, 2020. This motion is granted.

functional equivalence of future agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>8</sup>

The Postal Service asserts that its filing demonstrates that the PRIME Agreement is functionally equivalent to the baseline agreement, and requests that the agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. It asserts that the PRIME Agreement fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 5. The Postal Service also asserts that the PRIME Agreement and the baseline agreement are materially similar with respect to products and cost characteristics. *Id.* at 6. The Postal Service identifies numerous differences between the PRIME Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the agreements.<sup>9</sup>

The Commission has reviewed the Postal Service's reasons for asserting that the PRIME Agreement shares similar cost characteristics with the baseline agreement and meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product. It also has considered the Public Representative's comments.

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<sup>8</sup> See Order No. 546 at 9. The agreement was with Koninklijke TNT Post BV and TNT Post PakketService Benelux BV. *Id.* at 1-2. See also Docket Nos. MC2010-34 and CP2010-95, Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, August 13, 2010, Attachment 2; Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840).

<sup>9</sup> *Id.* at 6-8. Differences include, among others, the number of FPOs party to the agreement, revisions to existing articles and attachments, and inclusion of new articles and attachments. *Id.*

The Commission concludes that the PRIME Agreement is functionally equivalent to the baseline agreement and that the differences between the two agreements do not fundamentally alter either the service the Postal Service will provide under the PRIME Agreement or the structure of the PRIME Agreement. The Commission therefore finds that the PRIME Agreement may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

*Cost considerations.* The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the PRIME Agreement should cover its attributable costs. The Commission notes that the supporting workpapers initially filed in the instant docket included extraneous data. The Postal Service filed updated workpapers without the extraneous data, under seal. See *generally* Second Response to CHIR No. 1. The Commission evaluated cost coverage based on the Postal Service's updated workpapers and determines that the PRIME Agreement should comply with 39 U.S.C. § 3633(a)(2). The addition of the PRIME Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should not cause cost coverage for the product to fall below 100 percent. Consequently, the Commission finds that the addition of the PRIME Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it

finds that the addition of the PRIME Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission concludes that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). In future filings, the Commission encourages the Postal Service to ensure the accuracy of its financial workpapers, including the inclusion of relevant data only, in order to facilitate Commission review as expeditiously as possible.

Similarly, the Commission finds the addition of the PRIME Agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the PRIME Agreement indicates it is consistent with section 3633(a). The Commission will review the cost coverage of the PRIME Agreement, the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

*Other considerations.* The PRIME Agreement is intended to take effect on July 1, 2020, with an indefinite duration. Notice at 1, 5; *id.* Attachment 2 at 3, 4. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the PRIME Agreement. If the agreement is terminated, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

*It is ordered:*

1. The PRIME Agreement filed in Docket No. CP2020-169 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective July 1, 2020.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the PRIME Agreement.
3. The Postal Service shall promptly file notice with the Commission in this docket if the PRIME Agreement is terminated.

By the Commission.

Erica A. Barker  
Secretary



## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products** **2000 Competitive Product List**

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#### **2500               Negotiated Service Agreements**

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#### **2515               Inbound International**

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#### **2515.10          Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

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#### **2515.10.5       Products Included in Group (Agreements)**

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

##### *Baseline Reference*

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

##### *Included Agreements*

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PRIME Agreement, CP2020-169, expires TBD

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